

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**COLIN HEBERT,** ) NO. EDCV 15-2641-PSG (KS)  
Plaintiff, )  
v. )  
**SGT. MORENO, et al.,** ) ORDER ACCEPTING FINDINGS AND  
Defendants. ) RECOMMENDATIONS OF UNITED  
 ) STATES MAGISTRATE JUDGE  
 )  
 )

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint (“Complaint”), all of the records herein, the Report and Recommendation of United States Magistrate Judge (“Report”), and Plaintiff’s Objections to the Magistrate Judge’s Report and Recommendation (“Objections”). Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a *de novo* review of those portions of the Report to which objections have been stated.

To the extent that Plaintiff makes newly-presented factual assertions in his Objections, the district court has discretion, but is not required, to consider these assertions presented for the first time in objections to a report and recommendation. *See Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002); *United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000). The

1 Court has exercised its discretion to consider the factual assertions in Plaintiff's Objections  
2 but concludes that they do not affect or alter the analysis and conclusions set forth in the  
3 Report. *Cf. Stevenson v. Adams*, No. 1:11-cv-00720-SKO PC, 2012 WL 5452075, at \*2-3  
4 (E.D. Cal. Nov. 7, 2012) (dismissing with prejudice at the screening stage a state prisoner's  
5 claim that his conditions of confinement violated the Eighth Amendment when he was placed  
6 in a holding cage at 2:30pm and forced to remain there for 24 hours during which time he was  
7 deprived of sleep and denied access to water and use of the restroom). Having completed its  
8 review, the Court accepts the findings and recommendations set forth in the Report.

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10 Accordingly, IT IS ORDERED that: (1) the Complaint is DISMISSED; and (2)  
11 Judgment shall be entered dismissing this action with prejudice.

12 DATED: 4/29/16



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14 PHILIP S. GUTIERREZ  
15 UNITED STATES DISTRICT JUDGE  
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